



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 24 1985

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OFFICE OF  
GENERAL COUNSEL

MEMORANDUM

TO: Jack W. McGraw  
Acting Assistant Administrator  
for Solid Waste and Emergency Response

FROM: Steve Atkinson, Attorney *TS Atkinson*  
Solid Waste and Emergency Response Division (LE-132S)

THRU: Lisa K. Friedman *LK Friedman*  
Associate General Counsel  
Solid Waste and Emergency Response Division (LE-132S)

SUBJECT: Exemption Request for Duane Marine Site, New Jersey

We have reviewed Region II's request for exemption from the \$1 million limitation for the Duane Marine site, and do not believe it presents any significant legal problems. However, we do have the following comments and suggestions:

(1) You should be aware that the Region's factual case for characterizing the threat of a release of caustics and presence of flammable materials (with a very generalized fire threat) at the site as an "emergency" is somewhat marginal.

(2) Region II's December 13, 1984 supplemental memorandum indicates that the removal action may address leaking of PCB-contaminated oil from buried, crushed containers, if funds remain after the other tasks are completed. These buried containers were not included in the description of the removal action contained in the Region's exemption request of November 30, 1984. In addition, neither the exemption request nor the supplemental memorandum indicate if or why these buried containers present an emergency situation. Therefore, we suggest that in

approving the exemption you either (a) defer approval of actions to address the buried, crushed containers, or (b) indicate that action to address such containers is only authorized to the extent the Region determines that the containers present an emergency situation which satisfies the criteria of section 104(c)(1).

(3) We understand that in the interval since the Region submitted its exemption request, the PRPs have agreed to carry out removal activities at this site. If so, this would undercut the basis for determining that timely response action will not be provided. We understand the interest of the Region in obtaining this section 104(c)(1) exemption, in order to be able to continue removal actions promptly if the PRPs do not. However, because the statute requires a finding that timely assistance will not otherwise be provided, you should clearly indicate that the exemption is being approved only to the extent that PRPs fail to carry out the actions described in a timely fashion.